No. 12549

United States
Court of Appeals
for the Ninth Circuit.

MIKE J. FEELEY,

Appellant,

vs.

TIGHE E. WOODS, Housing Expediter, OFFICE OF THE HOUSING EXPEDITER,

Appellee.

Transcript of Record

**Appeal from the United States District Court,
Western District of Washington,
Northern Division.**

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

MARK M. LITCHMAN,

414 American Building,
Seattle, Washington,

Attorney for Appellant.

C. E. KNOWLTON, JR.,

905½ Third Avenue,
Seattle, Washington,

Attorney for Appellee.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2201

TIGHE E. WOODS, Housing Expediter, OFFICE OF THE HOUSING EXPEDITER,

Plaintiff,

vs.

MIKE J. FEELEY,

Defendant.

COMPLAINT

Comes now plaintiff above named and alleges:

I.

That plaintiff is the duly appointed, acting and qualified Housing Expediter, Office of the Housing Expediter, an agency of the United States government created by the Veterans Emergency Housing Act of 1946 as amended (50 U.S.C.A. App. 1821 et seq.), and brings this action on behalf of the United States of America pursuant to the Housing and Rent Act of 1947, as amended by the Housing and Rent Act of 1948 (50 U.S.C.A. App. Secs. 1881-1906).

II.

Jurisdiction of this action is conferred upon this Court by Sec. 206(b) of the Act.

III.

That the defendant, Mike J. Feeley, residing at 1535 Bellevue Avenue, Seattle, Washington, has

been at all times mentioned herein the landlord and operator of certain controlled multiple unit housing accommodations located at 1535 Bellevue Avenue, Seattle, Washington, and at all times hereinafter mentioned this defendant has rented and offered for rent certain of the units within said housing accommodations.

IV.

That in the judgment of the Housing Expediter the defendant has engaged in acts and practices which constitute a violation of Sec. 206(a) of the said Act in that this defendant has since July 1, 1947, demanded and received rentals in excess of the otherwise maximum applicable rents for the use and occupancy of certain of the units within the housing accommodations operated by him and located at 1535 Bellevue Avenue, Seattle, Washington, by charging the tenants for and on account of the periods and for the use and occupancy of the units the rentals all as set forth in Exhibit "A" attached to this Complaint and hereby made a part hereof, when the maximum rentals established under and pursuant to the said Act were no more than those set forth in the said Exhibit "A," all of which resulted in the overcharges therein computed.

Wherefore plaintiff prays:

1. For a temporary and permanent injunction restraining the defendant, Mike J. Feeley, together with his agents and servants from renting or offering for rent any of the accommodations located at

1535 Bellevue Avenue, Seattle, Washington, at rentals in excess of the otherwise applicable maximum rentals as established pursuant to the said Housing and Rent Act.

2. For an Order of the Court directing the defendant, Mike J. Feeley, to restore those sums already exacted from his various tenants for the use and occupancy of the units occupied by such tenants in excess of the otherwise applicable maximum rentals as established therefor and pursuant to the Housing and Rent Act of 1947, as amended, to wit:

Tenant	Overcharge
A. Joseph	$ 207.96
J. Harvey	245.01
R. Buckholtz	214.16
T. Smith	245.75
J. McQuire) V. Schultz) C. Bruhahn)	169.20
Hutton & Whiteside	19.60
Martell	86.20
J. Fisher	94.40
C. Gabel & E. Thompson	148.69
J. Reese	19.50
C. H. Mullin	55.76
W. Ashwell	169.50
C. G. Hunter	207.53
D. Dunn and M. Sewall	344.68
R. E. Best	94.18
E. L. Cheshier	147.20
D. W. Huest	78.35

Tenant	Overcharge
C. E. Mintz	51.41
M. Thompson & L. Asplund	26.84
J. D. Anderson	102.79
D. Young	17.14
H. Christensen	267.01
C. Allen	27.04
M. Nick	6.72
F. L. Evans	203.70
C. Forsmark & F. Wetzel	16.87
D. King) L. Webb) L. Palmer)	30.50
B. Langley) Lancaster & Hulbert	124.18
J. Williscraft	69.02
A. Grasgulis) B. Lyons)	285.74
Liebel) Nick)	5.45
S. Bakke	54.50
S. Carithers	25.50
F. W. Riass	24.50
B. Ridders	169.50
	$4056.08

and if for any reason the said tenants or any of them be not entitled in equity and good conscience to receive such refund, or cannot be found, then in the alternative the Court order such money paid

over to the Treasurer of the United States, all for the purpose of enforcing compliance of said Act.

3. For the costs of this action.

4. For such other and further relief as the Court may deem just and equitable.

Dated at Seattle, Washington, this 21st day of February, 1949.

/s/ CLINTON J. CRANDALL,

/s/ C. E. KNOWLTON, JR.,

Attorneys for Plaintiff.

Address:
Office of Housing Expediter,
905½ Third Avenue,
Seattle 4, Washington.

[Title of District Court and Cause.]

ANSWER OF DEFENDANT

The Defendant answering the Plaintiff's Complaint denies and alleges as follows:

I.

Defendant admits Paragraph III of the Complaint.

II.

Defendant denies each and every allegation contained in Paragraph IV and the whole thereof.

Wherefore, Defendant having fully answered, prays that the action of the Plaintiff be dismissed and that he have Judgment against the Plaintiff for all his costs and disbursements herein incurred.

/s/ MARK M. LITCHMAN,
Attorney for Defendant.

[Endorsed]: Filed March 17, 1949.

[Title of District Court and Cause.]

AMENDED ANSWER

The defendant, by way of an Amended Answer, denies and alleges as follows:

I.

Defendant, answering Paragraph II of the complaint, denies the same.

II.

Defendant denies Paragraph III of the complaint.

III.

Defendant denies Paragraph IV of the complaint and all and every part thereof.

By way of a further and separate defense to the action, defendant alleges as follows:

That a little more than a year ago the defendant purchased the building located at 1535 Bellevue Avenue, Seattle, Wash., formerly known as the Pinevue Apartments, and that at the time, or shortly thereafter, the building was about to be condemned by the health department and the fire department as being untenantable because it was infected with rats and it had been, and was being, operated as dangerous to life and property in violation of the building and fire department's ordinances and rules and regulations of the City of Seattle; that the defendant requested, before condemnation thereof, an opportunity to make the building habitable; that he thereupon ordered all tenants to vacate said prem-

ises and spent a considerable amount of money in renovating said building to make it fit for human habitation.

That some time in August of 1948, he opened the said building for occupancy as a hotel in compliance with Sec. 6860 of Rem. Rev. Statutes of Washington, and kept a hotel register as required by Sec. 6861 of Rem. Rev. Statutes of Washington. That he advertised the said premises as an apartment-hotel and rendered all customary services furnished by a hotel in the City of Seattle excepting that of a bell hop, which was for the reason that it was a small hotel and did not require such service; that the defendant himself performed such services whenever they were required.

That defendant charged reasonable rents for his rooms and apartments and that he is entitled to continue operating the said premises as an apartment-hotel without being required to charge the rate required under the "Housing and Rent Act" of 1947 or 1948.

Wherefore, defendant prays for a judgment dismissing plaintiff's action.

/s/ MARK W. LITCHMAN,
Attorney for Defendant.

Duly verified.

Copy received.

[Endorsed]: Filed August 20, 1949.

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated between the plaintiff and the defendant by their respective undersigned attorneys, C. E. Knowlton, Jr., attorney for the Housing Expediter, and Mark M. Litchman, attorney for the defendant, that for the purpose of narrowing the proof on the trial of the cause above entitled, that the following facts are true and correct and no proof need be offered by either party concerning them; however, that the parties reserve all objections as to the materiality or admissibility of such facts.

1. That Tighe E. Woods was at the time of the commencement of this action and now is the duly appointed and qualified Housing Expediter.

2. That the defendant, Mike J. Feeley, since about June 5, 1948, has been the landlord and operator of a certain multiple unit housing accommodation located at 1535 Bellevue Avenue in the city of Seattle, Washington.

3. That the defendant made the rental charges of the tenants named and for the periods as set forth in the Schedule hereto attached marked Exhibit "A" at such location located at 1535 Bellevue Avenue, Seattle, Washington.

4. That the maximum rentals as established by an Order of the Rent Director of the Puget Sound Defense Rental Area for the respective units within the structure located at 1535 Bellevue Avenue, Se-

attle, Washington, on June 3, 1943, without any change being made thereafter until the Order referred to in Par. 5 of this Stipulation is set forth in such Exhibit "A" and columnized in such Exhibit under "Maximum Rent at the time of Rental Charge."

5. That the maximum rentals for the various units within the concerned accommodation as ultimately established for the same various units referred to in this Stipulation were established by order of the Rent Director dated May 18, 1949, and effective January 17, 1949, and are set forth under the column marked "Maximum Rent as ultimately established" in such Exhibit "A." That this Order was effective as of the date the landlord filed the petition at the Office of Housing Expediter for increase of rent, and none of the rental charges set forth in such Exhibit were affected by the terms of this Order.

6. That no Order has been made affecting the maximum rentals in any of the units within the accommodation located at 1535 Bellevue, Seattle, Washington, since the Order referred to in Par. 5 of this Stipulation, nor has the rental on any of these units been changed by any lease executed under or pursuant to the Housing and Rent Act of 1947, as amended.

7. That the difference between the maximum rentals as established by the Order of June 3, 1943, and in effect during the period set forth in such

Exhibit "A" and the rental charged during such period is set forth under the column marked "Overcharge List No. 1."

8. That the difference between the maximum rent as ultimately established by the Order of May 18, 1949, heretofore referred to as set forth in such Exhibit "A" under the column marked "Overcharge List No. 2."

9. That the reason why the Order of May 18, 1949, was issued by the Office of Housing Expediter was based upon the fact that the landlord completely rehabilitated the premises and changed the units therein from unfurnished to furnished, installed refrigerators, provided maid services, bedding and linen, laundry of linen, lights, cooking fuel and dishes and utensils, all of which services and improvements the persons heretofore named as tenants in such Exhibit "A" enjoyed during their respective terms of occupancy.

10. That the structure here concerned with prior to about June, 1948, had been operated as an apartment house, and about June 5, 1948, the defendant evicted all of the then tenants and occupants on the grounds then provided for by the Housing and Rent Act, and specifically for the reason that he wanted possession of the premises to make repairs and improvements on the premises which could not be done with the tenants in occupancy. Such repairs were made and the structure was reopened for occupancy on or about September 1, 1948. While no structural

changes were made in the individual units (the same units in the same space existed upon reopening as existed prior thereto) all of the apartments were redecorated, cleaned up and generally rehabilitated with a new roof placed upon the building in addition to the other services heretofore enumerated, which had not been theretofore provided to the tenants. As a matter of fact, prior to such evictions followed by repairs, the City of Seattle Health Department and the City of Seattle Fire Department had requested that numerous repairs and improvements be made to the structure herewith concerned or, in the alternative, that such structure would be ordered condemned.

Upon its reopening in September, 1948, an awning was placed in front of the structure bearing the legend "Feeley's Apartment Hotel." However, there is no contention that prior to about September 1, 1948, the structure was known or operated in any way except as a low class apartment house accommodation.

Dated at Seattle, Washington, this 14th day of October, 1949.

/s/ C. E. KNOWLTON, JR.,
Attorney, Office of Housing Expediter.

/s/ MARK M. LITCHMAN,
Attorney for Defendant.

EHIBIT "A"

Landlord—Mike J. Feeley — 1535 Bellevue Avenue, Seattle

Unit	Tenant	Period	Charge for Period	Max. Rent for Time of Rental Charge	Overcharge List #1	Max. Rent as Ultimately Est.	Overcharge List #2
# 1	A. Joseph	3 mos. 20 days 9-22-48/1-11-49	$265.00	$22.00 per mo. or 80.66 for period	$184.34	$ 55.50 per mo. 204.00 for period	$ 61.00
# 3	J. Harvey	2 mos. 2 days 9-8-48/11-10-48	180.00	22.50 per mo. or 46.50 per period	133.50	56.00 per mo. 115.73 for period	65.73
# 3	R. Buekholtz	2 mos. 2 days 11-8-48/1-10-49	162.00	22.50 per mo. or 46.50 per period	115.50	56.00 per mo. 115.73 for period	46.27
# 4	T. Smith	4 mo. 11 days 9-5-48/1-16-49	344.00	22.50 per mo. 98.25 for period	245.75	56.00 per mo. 265.03 for period	78.97
# 5	J. McGuire) V. Schultz) C. Bruhahn)	2 mo. 2 days 9-5-48/11-7-48	225.00	27.00 per mo. 55.80 for period	169.20	63.50 per mo. 131.23 for period	93.77
# 5	Hutton & Whiteside	6 days 11-7-48/11-13-48	25.00	27.00 per mo. 5.40 for period	19.60	63.50 per mo. 12.30 for period	12.31
# 5	Martell	1 mo. 2 days 11-7-48/12-9-48	115.00	27.00 per mo. 28.80 for period	86.20	63.50 per mo. 67.73 for period	47.27
# 5	J. Fisher	1 mo. 4 days 12-10-48/1-14-49	125.00	27.00 per mo. 30.60 for period	94.40	63.50 per mo. 71.96 for period	53.04
# 6	C. Gabel and E. Thompson	1 mo. & 26 days 9-7-48/11-2-48	200.00	27.50 per mo. 51.31 for period	148.69	64.00 per mo. 119.45 for period	80.55
# 6	J. Reese	6 days 11-3-48/11-9-48	25.00	27.50 per mo. 5.50 for period	19.50	64.00 per mo. 12.67 for period	12.33
# 6	J. Harvey	1 mo. and 12 days 11-10-48/12-22-48	150.00	27.50 per mo. 38.49 for period	111.51	64.00 per mo. 89.59 for period	60.41
# 6	C. H. Mullen	21 days 12-22-48/1-12-49	75.00	27.50 per mo. 19.24 for period	55.76	64.00 per mo. 44.79 for period	30.21
# 7	R. Buekholtz	1 month 9-12-48/10-12-48	75.00	22.50 per mo. 22.50 for period	52.50	56.00 per mo. 56.00 for period	19.00
# 7	W. Ashwell	3 mo. & 4 days 10-10-48/1-14-49	240.00	22.50 per mo. 70.50 for period	169.50	56.00 per mo. 175.46 for period	64.54
# 8	C. G. Hunter	4 mo. and 1 day 9-7-48/1-8-49	298.28	22.50 per mo. 90.75 for period	207.53	56.00 per mo. 225.86 for period	72.42
# 9	D. Dunn and M. Sewall	4 mo. 4 days 9-7-48/1-11-49	448.00	25.00 per mo. 103.32 for period	344.68	59.50 per mo. 245.93 for period	202.07
#10	R. E. Best	14 days 9-3-48/9-17-48	44.00	23.00 per mo. 10.72 for period	33.38	56.50 per mo. 26.16 for period	17.84
#10	E. L. Cheshier	10 days 9-18-48/9-28-48	31.45	23.00 per mo. 7.60 for period	23.85	56.50 per mo. 18.83 for period	12.62
#10	D. W. Huest	1 mo. 2 days 9-28-48/10-29-48	102.88	23.00 per mo. 24.53 for period	78.35	56.50 per mo. 60.26 for period	42.62
#10	C. E. Mintz	21 days 10-30-48/11-20-48	67.50	23.00 per mo. 16.09 for period	51.41	56.50 per mo. 39.54 for period	27.96
#10	M. Thompson and L. Asplund	11 days 11-19-48/11-30-48	35.37	23.00 per mo. 8.43 for period	26.84	56.50 per mo. 20.71 for period	14.66
#10	J. D. Anderson	1 mo. 6 days 11-30-48/1-4-49	112.50	23.00 per mo. 27.60 for period	84.90	56.50 per mo. 67.79 for period	44.71

EXHIBIT "A"—(Continued)

Landlord—Mike J. Feeley — 1535 Bellevue Avenue, Seattle

Unit	Tenant	Period	Charge for Period	Max. Rent for Time of Rental Charge	Overcharge List #1	Max. Rent as Ultimately Est.	Overcharge List #2
#10	D. Young	7 days 1-8-49/1-15-49	22.50	23.00 per mo. 5.36 for period	17.14	56.50 per mo. 13.18 for period	9.32
#11	H. Christenson	4 mos. 18 days 9-8-48/1-26-49	366.00	21.50 per mo. 98.89 for period	267.01	55.00 per mo. 252.99 for period	113.01
#12	C. Allen	14 days 9-10-48/9-23-48	38.00	23.50 per mo. 10.98 for period	27.04	57.00 per mo. 26.60 for period	11.40
#12	M. Niek	6 days 9-25-48/10-1-48	11.42	23.50 per mo. 4.70 for period	6.72	57.00 per mo. 11.40 for period	.02
#12	F. Evans	3 mo. 6 days 10-1-48/1-7-49	268.00	23.50 per mo. 75.20 for period	192.80	57.00 per mo. 182.40 for period	85.60
#14	C. Forsmark and F. Wetzel	8 days 9-10-48/9-17-48	25.00	30.50 per mo. 8.13 for period	16.87	67.00 per mo. 17.86 for period	7.14
#14	R. E. Best	21 days 9-17-48/10-8-48	82.14	30.50 per mo. 21.34 for period	60.80	67.00 per mo. 46.89 for period	35.25
#14	R. Buekholtz	21 days 10-9-48/10-30-48	67.50	30.50 per mo. 21.34 for period	46.16	67.00 per mo. 46.89 for period	20.61
#14	D. King) L. Webb) L. Palmer) B. Langley)	14 days 10-25-48/11-8-48	45.00	30.50 per mo. 14.22 for period	30.50	67.00 per mo. 31.26 for period	13.74
#14	Laneaster and Hulbert	1 mo. 20 days 11-12-48/12-31-48	175.00	30.50 per mo. 50.82 for period	124.18	67.00 per mo. 111.66 for period	63.34
#14	J. D. Anderson	7 days 1-4-49/1-11-49	25.00	30.50 per mo. 7.11 for period	17.89	67.00 per mo. 15.63 for period	9.37
#15	J. Williseraft	28 days 9-4-48/10-2-48	93.00	26.00 per mo. 23.98 for period	69.02	62.50 per mo. 58.32 for period	34.68
#15	A. Drasgulis and B. Lyons	3 mos. and 13 days 10-2-48/1-15-49	375.00	26.00 per mo. 89.26 for period	285.74	62.50 per mo. 214.57 for period	160.43
#16	A. Joseph	13 days 9-9-48/9-22-48	32.50	20.50 for mo. 8.88 for period	23.62	54.00 per mo. 23.40 for period	9.10
#16	B. Liebel and M. Niek	3 days 9-22-48/9-25-48	7.50	20.50 per mo. 2.05 for period	5.45	54.00 per mo. 5.40 for period	2.10
#16	F. L. Evans	6 days 9-25-48/10-1-48	15.00	20.50 per mo. 4.10 for period	10.90	54.00 per mo. 10.80 for period	4.20
#16	E. L. Cheshier	2 mos. 9 days 9-28-48/12-6-48	170.50	20.50 per mo. 47.15 for period	123.35	54.00 per mo. 124.20 for period	46.30
#16	S. Bakke	1 month 12-9-48/1-8-49	75.00	20.50 per mo. 20.50 for period	54.50	54.00 per mo. 54.00 for period	21.00
#17	S. Carrithers	14 days 9-9-48/9-23-48	36.00	22.50 per mo. 10.50 for period	25.50	56.00 per mo. 26.12 for period	9.88
#17	F. W. Riass	14 days 9-22-48/10-6-48	35.00	22.50 per mo. 10.50 for period	24.50	56.00 per mo. 26.12 for period	8.88
#17	B. Riddes	3 mos. & 4 days 10-5-48/1-9-49	240.00	22.50 per mo. 70.50 for period	169.50	56.00 per mo. 175.46 for period	64.54
				Total	$4056.08		$1890.21

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2201

TIGHE E. WOODS, Housing Expediter, OFFICE OF THE HOUSING EXPEDITER,

Plaintiff,

vs.

MIKE J. FEELEY,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come duly on for trial the 14th day of October, 1949, before the Honorable Lloyd L. Black, United States District Judge, sitting without a jury, C. E. Knowlton, Jr., appearing for the plaintiff, and Mark M. Litchman appearing for the defendant, and the Court having heard the evidence submitted and having inspected the premises and considered the Briefs filed by counsel, the Court now makes its

Findings of Fact

as follows:

I.

That the defendant, Mike J. Feeley, is and has been the landlord and operator of a certain housing accommodation located at 1535 Bellevue Avenue in the city of Seattle, Washington, from September 1, 1948, to the present.

II.

That the defendant charged the following persons the following sums as rent for the use and occupancy of the described units within the said accommodation and for the periods stated as follows:

Unit	Tenant	Period of Occupancy	Chg. for Period
1	A. Joseph	9-22-48/ 1-11-49	$265.00
3	J. Harvey	9- 8-48/11-10-48	180.00
3	R. Buckholtz	11- 8-48/ 1-10-49	162.00
4	T. Smith	9- 5-48/ 1-16-49	344.00
5	J. McGuire) V. Schultz) C. Bruhahn)	9- 5-48/11- 7-48	225.00
5	Hutton & Whiteside	11- 7-48/11-13-48	25.00
5	Martell	11- 7-48/12- 9-48	115.00
5	J. Fisherman	12-10-48/ 1-14-49	125.00
6	C. Gabel and E. Thompson	9- 7-48/11- 2-48	200.00
6	J.Reese	11- 3-48/11- 9-48	25.00
6	J. Harvey	11-10-48/12-22-48	150.00
6	C. H. Mullen	12-22-48/ 1-12-49	75.00
7	R. Buckholtz	9-12-48/10-12-48	75.00
7	W. Ashwell	10-10-48/ 1-14-19	240.00
8	C. G. Hunter	9- 7-48/ 1- 8-49	298.28
9	D. Dunn and M. Sewell	9- 7-48/ 1-11-49	448.00
10	R. E. Best	9- 3-48/ 9-17-48	44.00
10	E. L. Cheshier	9-18-48/ 9-28-48	31.45
10	D. W. Huest	9-28-48/10-29-48	102.88
10	C. E. Mintz	10-30-48/11-20-48	67.50
10	M. Thompson and L. Asplund	11-19-48/11-30-48	35.37
10	J. D. Anderson	11-30-48/ 1- 4-49	112.50
10	D. Young	1- 8-49/ 1-15-49	22.50
11	H. Christenson	9- 8-48/ 1-26-49	366.00
12	C. Allen	9-10-48/ 9-23-48	38.00
12	M. Nick	9-25-48/10- 1-48	11.42
12	F. Evans	10- 1-48/ 1- 7-49	268.00
14	C. Forsmark and F. Wetzel	9-10-48/ 9-17-48	25.00
14	R. E. Best	9-17-48/10- 8-48	82.14
14	R. Buckholtz	10- 9-48/10-30-48	67.50
14	D. King) L. Webb) L. Palmer) B. Langley)	10-25-48/11- 8-48	45.00
14	Lancaster and Hulbert	11-12-48/12-31-48	175.00
14	J. D. Anderson	1- 4-49/ 1-11-49	25.00
15	J. Williscraft	9- 4-48/10- 2-48	93.00

Unit	Tenant	Period of Occupancy	Chg. for Period
15	A. Drasgulis and B. Lyons	10- 2-48/ 1-15-49	375.00
16	A. Joseph	9- 9-48/ 9-22-48	32.50
16	B. Liebel and M. Nick	9-22-48/ 9-25-48	7.50
16	F. L. Evans	9-25-48/10- 1-48	15.00
16	E. L. Cheshier	9-28-48/12- 6-48	170.50
16	S. Bakke	12- 9-48/ 1- 8-49	75.00
17	S. Carrithers	9- 9-48/ 9-23-48	36.00
17	F. W. Riass	9-22-48/10- 6-48	35.00
17	B. Riddes	10- 5-48/ 1- 9-49	240.00

III.

That on June 3, 1943, an Order was made and entered by the Rent Director of the Office of Price Administration fixing and establishing rental for the various units within the accommodation located at 1535 Bellevue Avenue in the city of Seattle, Washington, at the rates per month set forth hereunder under Column "A." That such rentals so set by such Order were not thereafter changed or adjusted until an Order issued May 18, 1949, effective January 17, 1949, by the Office of Housing Expediter was made and these latter rentals so fixed and established and hereunder listed under Column "B."

Unit	Column "A"	Column "B"
1	$22.00 per month	$55.00 per month
3	22.50 per month	56.00 per month
4	22.50 per month	56.00 per month
5	27.00 per month	63.50 per month
6	27.50 per month	64.00 per month
7	22.50 per month	56.00 per month
8	22.50 per month	56.00 per month
9	25.00 per month	59.50 per month
10	23.00 per month	56.50 per month
11	21.50 per month	55.00 per month
12	23.50 per month	57.00 per month
14	30.50 per month	67.00 per month
15	26.00 per month	62.50 per month
16	20.50 per month	54.00 per month
17	22.50 per month	56.00 per month

IV.

That the reason for the Order heretofore referred to as being effective January 17, 1949, was because of the substantial addition to such accommodations of various services, equipment and improvements, which the tenants listed in Finding No. II enjoyed during their term of occupancy.

V.

That the structure located at 1535 Bellevue Avenue, Seattle, Washington, is not and has not been a hotel in the community, nor is it nor has it been known as such within such community, nor were additional housing accommodations created by conversion.

VI.

That in collecting the rentals for the various units set forth in Findings of Fact No. II up to about the 15th of January, 1949, the defendant acted in good faith in the honest assumption that the accommodation he was operating was not subject to rent control under the Housing and Rent Act, and from these Findings of Fact the Court makes the following

Conclusions of Law

1. That Tighe E. Woods, as Housing Expediter, Office of Housing Expediter, is entitled to maintain this action and jurisdiction is conferred upon this Court by Sec. 206(b) of the Housing and Rent Act of 1947, as amended.

2. That the structure located at 1535 Bellevue Avenue in the city of Seattle, Washington, is a controlled housing within the meaning of the Housing and Rent Act of 1947 as amended.

3. However, that because the tenants enjoyed the services, equipment and improvements during their term as tenants, for which the increased rental allowance made by the Order effective January 17, 1949, was granted, in the exercise of the sound discretion of the Court the determination of any restitution due justly and fairly should be predicated on such Order rather than the maximum rent technically in effect during the period of occupancy of such tenants.

4. That because the tenants were permitted to remain in possession for short and odd terms of occupancy without being expected to or paying rentals for a full monthly period, and this condition constituted both a service to the tenant and a burden on the landlord, and in view of the fact that prior to about January 17, 1949, the landlord in making the rental charges that he did, was acting in good faith, in the sound discretion of the Court and for the purpose of determining the amount of restitution due, the difference between the amount of the rental charged and the amount established by the Order effective January 17, 1949, should be the measure of restitution if the occupancy of the tenant constituted one or more months, plus the rate of 1½ times the monthly rate if the occupancy of the tenant constituted one or more weeks, in addition

to such months; provided that in no case should the weekly rate for a period less than a month exceed the monthly rental, plus a rate of twice the monthly rate if the occupancy of the tenant constituted one or more days in addition to such months and weeks, but provided that in no case that the daily rate should exceed the weekly rate for a period less than a week, nor should the daily and weekly rate combined exceed the monthly rate. That if the period of occupancy of the tenant was for less than a month, then the measure of restitution should be computed at the same rate as the period in excess of the month is computed for a tenant renting for a month plus additional weeks or days as heretofore set forth. Nothing in this Conclusion, however, is intended to authorize the defendant herein to retain rentals in excess of the proportionate monthly rate based upon the Order of January 17, 1949, after such date, regardless of the term that any tenant may have occupied any unit within the concerned accommodation thereafter.

Let Judgment for Injunction and Restitution be entered accordingly.

Done in open court this 20th day of January, 1950.

/s/ LLOYD L. BLACK,
United States District Judge.

Presented by:

/s/ C. E. KNOWLTON, JR.,
Attorney for Plaintiff.

[Endorsed]: Filed Jan. 20, 1950.

In the District Court of the United States for the Western District of Washington, Northern Division

No. 2201

TIGHE E. WOODS, Housing Expediter, OFFICE OF THE HOUSING EXPEDITER,

Plaintiff,

vs.

MIKE J. FEELEY,

Defendant.

JUDGMENT

The Court having entered its Findings of Fact and Conclusions of Law herein and being fully advised in the premises, Now, Therefore,

It Is Hereby Ordered, Adjudged and Decreed that the defendant, Mike J. Feeley, together with his agents and servants, be restrained and enjoined from demanding or receiving rentals for any of the units within the accommodation located at 1535 Bellevue Avenue, Seattle, Washington, in excess of the otherwise maximum rentals as established pursuant to the said Housing and Rent Act of 1947, as amended.

It is the further Judgment and Order of this Court that the defendant, Mike J. Feeley, shall forthwith pay into the registry of the Court, by paying to the Clerk thereof, the total sum of $1,498.31, such sum representing the amount which this

Court has found the defendant has charged his various tenants in excess of the otherwise maximum rentals as established under the Housing and Rent Act of 1947, as amended, for the period from September 1, 1948, until on or about January 17, 1949, for the use and occupancy of the various units within the accommodation located at 1535 Bellevue Avenue, Seattle, Washington, and which this Court has further found in the exercise of its equitable discretion to be the proper measure of restitution in this case.

It Is Further Ordered that the several persons hereinafter named, upon filing written application therefor with the Clerk of this Court, requesting the respective sums following their names, be paid to them out of the total of $1,498.31 paid into the clerk by the said defendant and upon order of the court acting upon such application shall be entitled to receive from the said Clerk such sum, to wit:

A. Joseph	$43.00	R. E. Best	$20.04
J. Harvey	103.49	E. L. Cheshier	38.04
T. Smith	85.90	D. W. Huest	38.96
R. Buckholtz	62.14	C. E. Mintz	11.00
J. McGuire)		M. Thompson)	
V. Schultz)	89.66	L. Asplund)	.98
C. Bruhahn)		J. D. Anderson	38.26
Hutton)		D. Young	2.95
Whiteside)	3.02	H. Christenson	93.50
Martell	43.16	F. L. Evans	77.28
J. Fisherman	44.82	Lancaster)	
Gabel)		Hulbert)	41.00
E. Thompson)	72.00	J. Williscroft	30.50
Reese	2.85	A. Drasgulis)	
C. H. Mullen	11.00	B. Lyons)	144.24
W. Ashwell	57.28	S. Bakke	21.00
C. G. Hunter	70.60	Riddes	57.28
D. Dunn)			
M. Sewall)	194.36	Total.....	$1498.31

It is further ordered that the Plaintiff shall have and recover his taxable costs herein, including filing and Marshal's fees for service in the amount of $17.72.

Done in open court this 20th day of January, 1950.

/s/ LLOYD L. BLACK,
United States District Judge.

Presented by:

C. E. KNOWLTON, JR.,
Attorney, Office of Housing Expediter.

[Endorsed]: Filed and entered Jan. 20, 1950.

In the District Court of the United States for the Western District of Washington, Northern Division

No. 2201

TIGHE E. WOODS, Housing Expediter, OFFICE OF THE HOUSING EXPEDITER,
Plaintiff,

vs.

MIKE J. FEELEY,
Defendant.

MOTION FOR NEW TRIAL

The Defendant moves the Court for an Order setting aside the Judgment in favor of the Plaintiff and against the Defendant entered on the 20th day

of January, 1950, and for a new trial on the following grounds:

1. Insufficiency of the evidence to justify the Decision and Judgment in the following particulars:

1. That the Plaintiff had no legal authority to sue on behalf of the tenants.

2. That the accommodations of the Defendant were not subject to control by the Expediter for two reasons:

a. That such accommodations were additional housing accommodations converted from a building which, but for Defendant's promises and assurances to the Fire and Health Departments of the City of Seattle that he would correct the unsafe and unhealthy conditions, would have been condemned and would have remained vacant.

b. That the services furnished by the Defendant to the tenants were more than those given by any hotel, apartment house or rooming house and were those which came within the meaning of a family hotel.

3. Newly discovered evidence material for the Defendant that he could not with reasonable diligence have discovered and produced at the trial which evidence is supported by the Affidavit of Della Foughty hereto attached with evidence is not cumulative and not corroborative of evidence produced at the trial but which evidence if proven at the trial would change the amount of the Judgment

to the benefit of the Defendant. Such evidence will show that the Local Area Expediter had arbitrarily established monthly rates which violated Sec. 204 (b)(1) of the Housing and Rent Act of 1947 as amended and it has become impossible for the Defendant to operate the accommodations.

Dated at Seattle, Washington, this 30th day of January, 1950.

/s/ MARK M. LITCHMAN,
Attorney for Defendant.

[Title of District Court and Cause.]

AFFIDAVIT OF DELLA FOUGHTY IN SUPPORT OF DEFENDANT'S MOTION FOR NEW TRIAL

State of Washington,
County of King—ss.

Della Foughty, being first duly sworn on oath deposes and says: that she makes this affidavit in support of Defendant's Motion for a New Trial of the above-entitled case; that she is familiar with the facts to be hereinafter set forth by reason of her employment by the Defendant to check on the income and expenses in the operation of the accommodations located at 1535 Bellevue, Seattle, Washington; that at the time that the Defendant was requested by the Local Area Expediter to apply for the establishment of monthly rates for the said accommodation the accommodation had only been

in operation under the ownership of the Defendant for a little more than four (4) months; that she was the one who prepared the application and at the time she was of the opinion that the total monthly expenses for the operation of said accommodation would not amount to more than the sum of $748.57. She excluded therefrom allowances for depreciation, repairs, replacements and payments on the principal and interest on the purchase of the building and the furniture although some of the items were mentioned in her statement. At the time the rental income was figured at $930.50 there was no allowance made for loss and vacancy which last figure was based upon the rates established by the Local Area Expediter. On May 17, 1949, monthly rates were established by the Local Area Expediter and although Affiant and the Defendant knew that they would have a difficult time to maintain the services and make repairs and replacements they didn't realize until after the trial of the case that were it not for the money they received from the commercial rentals, namely $285.00 per month, that they would not be able to take care of the increasing number of bills which came in which far exceeded the expenses on paper; that when the commercial rentals failed to come in it was then that it dawned upon Affiant that they would not be able to operate the accommodation; that the space that was formerly occupied by commercial tenants has been vacant for several months; that in addition to the above increase of expenses the accommodation has been

damaged as a result of the earthquake which up to date amounts to sixteen or seventeen hundred dollars; that every now and then a new damage appears as a result of the earthquake and that these repairs will have to be made otherwise the building may be condemned by the Building Department. That Affiant knows that the Defendant has fallen behind on his payments on the building to the extent of four months' payments, to wit: the sum of $1,600.00 and on the payments for the furniture to the extent of $2,305.00 and also on the payments for other articles of equipment such as oil burner, hot water tank, refrigerators and ranges. The creditors threaten to foreclose and that unless substantial payments are made by the Defendant they will take possession and in the case of the personal property will no doubt remove the same from the building. That the Affiant knows that it will be impossible to operate the accommodation furnishing the various services on the rates established by the Local Area Expediter; Affiant states that she would be willing to testify and will offer testimony and documents such as bills at a trial to substantiate her statements herein made. Affiant is not an accountant and was not aware of the facts alleged herein pertaining to the increased expenditures until some weeks after the trial when the Defendant asked her where they were going to get the money to continue operating the accommodation. Sec. 204 (b) (1) of the Housing and Rent Act of 1947 as amended requires the Expediter to allow the landlord a fair net operating

income. However, in the establishment of the low monthly rentals it will be impossible for the Defendant to operate said accommodation. All of the statements above-mentioned are not cumulative and are not corroborative of evidence produced at the trial but which evidence if proven at the trial would change the amount of the Judgment to the benefit of the Defendant if the said Defendant is allowed to prove the same and more than that would make it possible for him to operate the accommodations.

/s/ DELLA FOUGHTY,
Affiant.

Subscribed and Sworn to before me this 30th day of January, 1950.

[Seal] /s/ MARK M. LITCHMAN,
Notary Public in and for the State of Washington,
Residing at Seattle.

Copy received.

[Endorsed]: Filed Jan. 30, 1950.

In the District Court of the United States for the Western District of Washington, Northern Division

No. 2201

TIGHE E. WOODS, Housing Expediter, OFFICE OF THE HOUSING EXPEDITER,

Plaintiff,

vs.

MIKE J. FEELEY,

Defendant.

NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS

Notice is hereby given that Mike J. Feeley, the Defendant, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the Judgment entered in the above-entitled case on January 20, 1950, in favor of the Plaintiff and against the Defendant for the sum of $1,498.31 and costs and from all other Rulings and Orders made in the trial of the case and in particular from the Order denying a Motion for a New Trial entered February 10, 1950.

/s/ MARK M. LITCHMAN,
Attorney for Defendant.

[Endorsed]: Filed April 10, 1950.

[Title of District Court and Cause.]

COST BOND ON APPEAL

Bond No. 49 S 3801

Know All Men By These Presents:

That we, Mike J. Feeley, and The Aetna Casualty and Surety Company, a Connecticut Corporation of Hartford, Connecticut, are held and firmly bound unto Tighe E. Woods, Housing Expediter—Office of the Housing Expediter, in the sum of Two Hundred Fifty Dollars ($250.00), lawful money of the United States, to be paid to said Tighe E. Woods, Housing Expediter—Office of the Housing Expediter, his successor or successors, to which payment well and truly to be made we bind ourselves and each of us jointly and severally and each of our successors and assigns by these presents.

Sealed with our seals and dated this 10th day of April, 1950.

Whereas, the above-named Mike J. Feeley has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment, decision, and decree of the U. S. District Court in the above-entitled cause, which decision of the United States District Court was in favor of Tighe E. Woods, Housing Expediter—Office of the Housing Expediter, and against Mike J. Feeley.

Now, Therefore, the condition of this obligation is such that if the above-named Mike J. Feeley shall

prosecute its said appeal to effect and shall pay all costs if the appeal is dismissed or the judgment or decision of the U. S. District Court is affirmed, or such costs as the appellate court may award if the judgment and decision of the U. S. District Court is modified, then this obligation shall be void; otherwise to remain in full force and effect.

/s/ MIKE J. FEELEY,
Principal.

THE AETNA CASUALTY AND SURETY COMPANY.

[Seal] By /s/ J. L. WARME,
Resident Vice President.

Attest:

/s/ D. H. HOFFMAN,
Resident Assistant Sec'y.

[Title District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

To the Clerk of the above-mentioned Court:

Please transmit to the Clerk of the Court of Appeals for the Ninth Circuit the entire record together with the transcript of the proceedings in the above-entitled case.

/s/ MARK M. LITCHMAN,
Attorney for Defendant.

Service acknowledged.

[Endorsed]: Filed May 12, 1950.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2201

TIGHE E. WOODS, Housing Expediter, OFFICE OF THE HOUSING EXPEDITER,

Plaintiff,

vs.

MIKE J. FEELEY,

Defendant.

STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS AT TRIAL

October 1, 1949

Black, Judge.

Appearances:

C. E. KNOWLTON, JR.,
Attorney at Law, Appearing for and on behalf of plaintiff;

MARK M. LITCHMAN,
Attorney at Law, Appearing for and on behalf of defendant.

The Court: The cause of Tighe E. Woods, Housing Expediter, plaintiff, versus Mike J. Feeley, defendant, No. 2201, is called for trial.

Is the plaintiff ready?

Mr. Knowlton: Plaintiff is ready.

The Court: Is the defendant ready?

Mr. Litchman: The defendant is ready.

The Court: You may proceed.

Mr. Knowlton: Counsel have entered into a stipulation as to most of the material facts.

The Court: In writing?

Mr. Knowlton: It is in writing.

The Court: All right. If you will let me read it, I will know a great deal more than I do now.

(Court reads stipulation referred to.)

The Court: Well, what is the issue?

Mr. Litchman: If the Court please, I will further narrow the facts and the law to a point where the matter will be very simple. With reference to the legal points, immediately after the government has rested its case it is my intention to move to dismiss on the ground that the tenants have not given any written authorization to the expediter to bring the suit. If that motion be denied, we will then argue and offer proof to the effect that since August 1948, in line with the amended answer, that Mr. Feeley has been operating this place as an apartment hotel and furnishing services similar to the services rendered by other apartment hotels in the City of Seattle, and also in line with that which the State statute provides as to what constitutes a hotel. Hence under the Federal statute we contend we have a right since we opened the establishment under Section 1892 Title 50, which decontrols housing accommodations in any estab-

lishment which is commonly known as a hotel, and also Section 3-a, that there has been a reconversion and conversion of the housing accommodation. I suppose you would call it a house although I would call it in my own language a flop house. That is really what it was before we took over.

And we want to show that he is operating now as a hotel and giving the same kind of service as do other hotels in the City of Seattle, and I think it is admitted by the stipulation that it was about to be condemned by both the Health Department and the Fire Department. By promising to get rid of the rats and make the necessary improvements——

The Court: In other words, your position is that Mr. Feeley should pay nothing?

Mr. Litchman: That is correct, Your Honor.

The Court: And it is your further position that even if he should pay something that this plaintiff is not authorized to collect it?

Mr. Litchman: That is right.

The Court: Now, what is your position, Mr. Knowlton? How much are you now asking for?

Mr. Knowlton: If your Honor please, I suppose you understand the stipulation?

The Court: I have read it.

Mr. Knowlton: I would like to point out——

The Court: I am now asking you how much you think you should get judgment for?

Mr. Knowlton: We feel this subsequent order that was not issued or was not effective until January of this year, and this overcharge occurred prior

to that time,—was because he had increased his services a lot more than he had——

The Court: How long has he been giving these extra services?

Mr. Knowlton: All the tenants named in this schedule received the services during the entire period of the occupancy.

The Court: May I speak off the record?

(Both counsel assent to a discussion off the record.)

The Court: Mr. Litchman, suppose you make your motion without argument, and I will take it under advisement and let you put in evidence without waiving your position.

Mr. Litchman: At this time I move the Court that the case of Woods, Expediter, against the defendant Mike Feeley be dismissed on the ground and for the reason that there is no allegation in the complaint and there is no evidence introduced and there is nothing in the stipulation to indicate in any way that there has been any written authorization on the part of any tenants to the expediter to bring the suit or any other suit on behalf of any of the tenants.

The Court: Well, I will ask the government, do you have written authorization to bring this suit from the tenants?

Mr. Knowlton: I think we may have several complaints, but I don't contend we have written authorization for any substantial number of tenants.

Mr. Knowlton: I may have, but I consider that fact immaterial.

The Court: All right. I will take the motion under advisement and allow the defendant to put in evidence as to the character of the accommodations without waiver of such rights as he may have by reason of the fact that the plaintiff is not authorized to bring the suit for the different tenants or some of them.

Ruling reserved.

DELLA FOUGHTY

being first duly sworn, testified on behalf of defendant as follows:

Direct Examination

By Mr. Litchman:

Q. Will you state your full name, please?

A. Della Foughty.

Q. Where do you live, Mrs. Foughty?

A. At 1515 Belmont.

Q. Do you know the defendant, Mr. Feeley?

A. Yes.

Q. Are you employed by Mr. Feeley?

A. Yes.

Q. How long have you been employed by Mr. Feeley? A. A little over five years.

Q. What do your duties consist of?

A. Well, as secretary, and taking care of his business.

The Court: What?

(Testimony of Della Foughty.)

The Witness: Taking care of his business.

Q. Have you had any experience as a hotel keeper and apartment house operator, and so on?

A. Yes.

Q. Where? A. Seattle.

Q. What did you operate?

A. I operated the Wilshire Hotel.

Q. That is located in Seattle? A. Yes.

Q. How big a place is that? A. 132 rooms.

The Court: Where is it?

The Witness: 1934 Seventh Avenue.

The Court: Proceed.

Q. Are you familiar with the services rendered by Mr. Feeley in the operation of this apartment building located at 1535 Belmont?

A. Yes.

Q. Is that Belmont? A. Bellevue.

Q. Just tell the Court what kind of services are rendered to the tenants in that apartment building?

A. Well, they get all the services: daily maid service, linen, everything a hotel gives; even more than a hotel; they have dishes and utensils.

The Court: All that a hotel gives and more? What is more?

The Witness: They give all the dishes and silverware and everything that they can use except the food.

Q. How big a place is this?

A. Seventeen units.

The Court: Seventeen rooms?

(Testimony of Della Foughty.)

The Witness: Seventeen units.

Q. In other words, you have seventeen tenants?

A. Yes.

Q. What kind of services are offered by apartment hotels in the City of Seattle, do you know?

A. Yes, they have service similar to ours except they give weekly maid service and we give daily maid service.

Q. I will ask you at the time you commenced operations did you have a register for the occupants? A. Yes.

(Hotel register marked Defendant's Exhibit A for identification.)

Q. Handing you what has been marked Defendant's Exhibit A for identification, what is that book? A. Hotel register.

Q. Was that the register that was used when you opened up the Feeley Apartment Hotel?

A. Yes.

Mr. Litchman: I offer this in evidence.

Mr. Knowlton: When did you start using this?

The Witness: When we started the hotel.

Mr. Knowlton: I asked you when? What date?

The Witness: It was around the end of August.

The Court: Of what year?

The Witness: 1948.

The Court: Not before?

The Witness: No, we did not operate the place before that date.

Mr. Knowlton: I have no objection except it is

(Testimony of Della Foughty.)

immaterial, what they were using in September, 1948, if they were not using a register in June, 1947.

The Court: Overruled. Exhibit A admitted.

(Hotel register previously marked Defendant's Exhibit A for identification, received in evidence.)

Q. Now, was this establishment closed at any time prior to the time it opened up as an apartment hotel? A. Yes, around two months.

Q. You do not furnish bell boy service at all, do you? A. No.

Q. And do apartment hotels, hotels where they have only seventeen units or seventeen occupants—do they furnish bell boy service?

A. No, there is really no need for it.

Mr. Litchman: I have here, if the Court cares to have it—I don't want to clutter up the record with a lot of statements showing what is furnished because I think the stipulation shows. I don't think there is anything else that has any bearing on the case except that I can submit this if Your Honor wants to see just what is in each unit, a list of dishes, furniture, silverware, and so on and so forth, if Your Honor cares to have it.

The Court: All right. I say all right. You have notified me you have such. I am not making any request.

Mr. Litchman: I don't know whether you wanted it or not.

(Testimony of Della Foughty.)

The Court: It is for the parties to decide what evidence they shall offer.

Mr. Litchman: It is in the stipulation that all these services are furnished, but I thought you might want to see it. I don't want to clutter up the record with a lot of unnecessary stuff.

Cross-Examination

By Mr. Knowlton:

Q. Do you have a hotel desk in this accommodation? A. Yes.

Q. Where is it?

A. Right inside the door in the manager's apartment.

Q. Do you have elevator service?

A. We have only two floors. We don't need an elevator.

Q. What kind of telephone service do you provide the guests or tenants?

A. We give telephone service.

Q. Do you have a switchboard?

A. No switchboard, no. We call them.

Q. Do you have a buzzer system?

A. No, it is not necessary.

Q. Would you explain exactly what you do have?

A. We keep someone there to answer the phone and call the tenants to the phone.

Q. In other words, you have a phone in the manager's office, and if someone desires to get them, the tenants, they are called to the manager's office?

(Testimony of Della Foughty.)

Someone in the manager's office goes out and notifies the tenant there is a telephone call?

A. No, we have phones in each hallway.

Q. Are they pay telephones? A. Yes.

Q. Does that mean you have phones on each floor? A. Yes.

Q. There is no individual telephone service in the individual units, is that correct? A. No.

Q. Is there any lobby in this structure?

A. A small lobby, yes.

Q. Where is that located?

A. On the ground floor.

Q. Do you have to go up steps to get to the hotel rooms? A. Yes.

Q. The lobby or sitting room is on the ground floor? A. Yes.

Q. But there is nothing there except a place to sit down? A. That is right; a small lobby.

Q. Are you familiar with the operation of this place prior to August or September, 1948?

A. I am familiar with the building, yes.

Q. How long have you been familiar with it?

A. Oh, I would say about six months prior to that time.

Q. Were you familiar with the operation during the six months prior to September, 1948?

A. In what way do you mean familiar?

Q. Do you know what happened? Do you know what services were provided?

A. Yes, I do. There were no services.

(Testimony of Della Foughty.)

Q. By the way—the individual units are all self-contained units, that is, have kitchen and bath?

A. Yes.

Q. Every unit has its own kitchen?

A. Yes.

Q. And every unit has its own bathroom?

A. Yes.

Q. There is no such thing as a single room accommodation—that is, sleeping rooms only?

A. No.

Q. You stated there were no services of any kind given to the guests before September or August of 1948?

A. No, they didn't even have hot water.

The Court: Mr. Knowlton, you say the month of September and she says the month of August. You mean in August when you operated and before September there was no hot water?

The Witness: When we took the building over. We purchased the building in June.

Q. There were no tenants there when you purchased the building? There were no tenants in the various units? A. Yes.

Q. What did you do about those tenants?

A. We gave them sixty days' notice to vacate.

Q. Based on what ground?

A. To fix the building up and redecorate it. It could not be done with the tenants in the building. They all knew it.

Q. When you fixed it up you did not change the number of units?

(Testimony of Della Foughty.)

A. No, we intended to, but we ran out of money.

Q. In other words, the apartments are there in the same place? A. Yes.

Q. And, actually, you fixed up the apartments and furnished them, but the same apartments are there as before? A. Yes.

Q. The same number of apartments?

A. Yes.

Q. So no additional housing accommodations were created at all by your fixing it up and rehabilitating it?

Mr. Litchman: I object to that. That is a conclusion for Your Honor to draw from the facts.

The Court: Overruled.

Mr. Litchman: If the Court please, I think the witness probably can't answer the question properly until it is explained to her what is meant by additional accommodations.

The Court: You may say additional rooms.

Mr. Litchman: It has already been made plain to the Court that there are no additional rooms.

Mr. Knowlton: That is right.

Mr. Litchman: And that the set-up is the same, so far as the physical set-up is concerned. If the Court understands from the stipulation that the quality of the accommodations is better and that there were additional services rendered and the accommodations were redecorated and repaired, but not structural changes made.

The Court: All right.

(Testimony of Della Foughty.)

Q. Now, when you opened up in August or September of 1948——

The Court: Just a moment. Now let's find out the date it opened up.

The Witness: We started renting in late August, but I don't think there was any ready until the early part of September.

Q. You first gave occupancy in September, 1948, is that correct? A. Yes.

Q. But you collected some rent in late August, is that correct? A. Yes.

Q. Then when you actually gave occupancy in September and put up a sign saying "Feeley Apartment Hotel"—where did you get your prices that you charged the various guests or tenants?

A. We gauged them by others giving the same service in hotels.

Q. Without regard to what the prices were for the accommodations before that date, is that correct?

A. Yes, they were so ridiculously low that the man who had the building then was going broke.

Q. And you didn't make any application or inquiry of the Office of Housing Expediter as to whether you were controlled or decontrolled?

A. We did not think it was necessary.

Q. Why didn't you think it was necessary?

A. We figured we were decontrolled.

Q. Who told you that?

Mr. Litchman: Oh, I object to that.

(Testimony of Della Foughty.)

A. I don't remember.

Q. You then decided you were decontrolled, is that correct?

A. Yes, or we would not have gotten in this mess, if we hadn't thought we were.

Redirect Examination

By Mr. Litchman:

Q. Mrs. Foughty, do you know of any apartment hotels where you have to walk upstairs in order to register in the City of Seattle?

A. Many, yes.

Q. Can you mention any one in particular?

A. The place?

Q. Yes, one hotel

A. The Glen Hotel and the Forest Hotel. I can name dozens. And the Texan Hotel.

Q. There is one right next to the hotel at Fourth and Spring. I noticed it as I went by there. What is the name of that hotel at Fourth and Spring—between Spring and Seneca, right next to the Hungerford?

A. I don't know the name of that. I know the one you mean. Many small hotels do not have a lobby.

Mr. Litchman: That is all.

Mr. Knowlton: That is all.

(Witness excused.)

Mr. Litchman: It is our position we come within

the two provisions, as I said before. One is the one you have already read.

The Court: Have you finished?

Mr. Litchman: Yes.

The Court: Any evidence for the government?

Mr. Knowlton: No.

The Court: Both sides rest?

Mr. Knowlton: Yes.

Mr. Litchman: And the other is 1892, and Section 3-a.

The Court: My own idea is that the most valuable assistance to me will be to see this property. Is there any reason we can't go right up?

Mr. Litchman: No.

Mr. Knowlton: No.

The Court: Is it agreed I can go up and that anything said up there is off the record?

Mr. Litchman: Yes.

Mr. Knowlton: Yes.

The Court: It is stipulated between counsel that it is unnecessary for the Court Reporter to be present and that whatever is said is off the record and not binding on any one? Is that correct?

Mr. Knowlton: That is correct.

Mr. Litchman: Yes, Your Honor.

The Court: Any statements made will be informal statements. If there is any desire to supplement by evidence the evidence that has already been heard, the parties will have to ask to reopen and put in such evidence. The Court will view the premises so that it can better understand the evidence

presented and can judge whether or not the premises are in agreement with the evidence presented. Is that satisfactory?

Mr. Litchman: Satisfactory to me.

Mr. Knowlton: Yes.

(Court, respective counsel, and defendant depart for inspection of premises in question.)

Continuation of Proceedings

All Parties Present

October 14, 1949

Mr. Litchman: Our position is, as I said before, that the plaintiff has no written authorization from any tenant to bring this suit in his behalf, and the statute gives to every tenant the right to bring a suit for violation, so to speak, of the contract or breach of contract.

In other words——

The Court: Does the statute say that the Expediter has to have written authority in order to bring a suit?

Mr. Litchman: No, it does not. There is no right given to the Expediter to bring any suit for——

The Court: Let me ask one thing more. Have there been any decisions supporting your view?

Mr. Litchman: I don't think the point has ever been raised.

The Court: I am first asking if there are any decisions supporting your view.

Mr. Litchman: I have asked counsel if there are any against him.

The Court: I am asking if there are any in your favor?

Mr. Litchman: I can find any number of decisions holding—not particularly the Expediter, but a person cannot bring a suit for another person——

The Court: No, I am not asking that. I am asking if the Expediter has to have written authority of the tenants in order to bring the suit.

Mr. Litchman: I haven't found any cases.

The Court: May the Court speak off the record?

(Each counsel assents to discussion off the record.)

(Discussion off the record.)

The Court: The Court has suggested informally to counsel what the Court feels would be an equitable and proper decision in this case providing the Expediter had authority to bring the action for the tenants within the year in which the tenants could have brought an action for themselves. The Court has suggested that in the event the parties are not able to reach a compromise settlement of the matter, the Court would like from the Expediter within ten days from today a brief upon the right of the Expediter to maintain the action and on such other points as the Expediter would like to urge or consider, the defendant to have fifteen days after receipt of the Expediter's opening brief to answer, and the Expediter to have one week after receipt of defendant's brief for reply. I think so that the Court may be better advised I will continue this

matter until 9:30 o'clock a.m. one week from today, at which time counsel may inform me as to whether or not there has been any compromise agreement.

December 30, 1949

COURT'S ORAL DECISION

The Court: In the case of Tighe E. Woods, Housing Expediter, plaintiff, versus Mike J. Feeley, defendant, the Court has given serious consideration to the authorities cited, to the evidence produced and also to those facts which the Court learned upon a visit to the premises.

The Expediter commenced this action asking for restitution to the tenants of the difference between the amounts they paid from about August, 1948, to about January 17, 1949, and the amounts which had been authorized previously to be charged as rents for the particular premises but for entirely different accommodations of much less worth.

As of January 17, 1949, there became effective a new schedule of rents based upon the much improved accommodations and much greater services rendered. The previously authorized rent schedule was for apartment units wholly unfurnished in a dilapidated and leaking building with inadequate and defective plumbing. Beginning about August, 1948, and during the period covered the defendant furnished apartment units to tenants, which apartment units had been much improved, the plumbing and lighting being repaired and the walls repaired and redecorated. The roof was repaired. New and

attractive furniture for the units involved was added including new ranges and new refrigerators. Various services including maid service, linen, and towel service were supplied. Certainly there can be no comparison between the proper rental for the apartments and services rendered by the defendant beginning about August, 1948, until January 17, 1949, with the totally inadequate unfurnished apartment units listed under the earlier rent schedule.

The Court finds, however, that the premises were not freed from control. The premises were neither a hotel nor generally considered or reputed as such in the community or neighborhood, but the apartments and services rendered made the tenancy unique in that the tenants were not required to accept the premises on a month-to-month basis, but could obtain them on a daily basis, weekly basis, monthly basis, or on a combination of monthly, weekly, and daily bases. The landlord in good faith believed that he had the right to make the charges he did. He in good faith believed he was freed from rent control. The Court is satisfied that the tenants were as well satisfied with the charges made as tenants in the kind of accommodations offered ever are. The Court is satisfied that most of the tenants were well satisfied with the accommodations offered and the privilege of obtaining same for odd periods.

The Court finds that the Expediter is not entitled to a judgment for restitution of more than the difference between the rents scheduled effective January 17, 1949, and those charged when the tenancy was monthly.

Where weekly occupancy was had a reasonable rental for the defendant to charge was one hundred fifty per cent of the proportionate monthly rate.

Where there was occupancy by the day the reasonable charge for the defendant to make was twice the proportionate monthly rate.

But in no event is the defendant entitled to retain from any single tenant for weekly occupancy more than the price per month under the schedule. And, likewise, in no event is the defendant entitled to retain for daily occupancy where a tenant continued on more than the reasonable weekly rate as now announced. However, where a tenant continued after the expiration of one or more weeks for an odd number of days, a reasonable charge by the defendant would be at the weekly rate I have specified for the week, and at the daily rate as I have specified for the odd days, with the limitation that there shall be no excess charge for the portion of a month over the monthly rate as previously mentioned nor for any odd days of a week exceeding the weekly rates I have specified.

The intention is that the defendant may receive and properly retain the weekly and monthly rentals as I have stated for the period plus the odd weeks and odd days over a month or months or week or weeks, with the specific provision that any fractional part of a month or week shall not exceed the monthly or weekly rate now specified.

The plaintiff is entitled to have an order or judgment requiring restitution to the tenants of the

amounts in excess of the monthly, weekly, and daily rates I have earlier in this oral opinion set forth.

Nothing is intended in this opinion to authorize the defendant's retaining rents for portions of a month or week after January 17, 1949, in excess of the proportionate monthly rental authorized by the Housing Expediter effective January 17, 1949. But before January 17, 1949, and after or beginning with August, 1948, the landlord in good faith believed that he was entitled to charge reasonable rates on a daily or weekly basis for tenancies. It appears to me that for such period it would be unreasonable to require the landlord to return all charges for daily and weekly services which exceeded the proportionate amount merely of the monthly schedule. Certainly, a landlord who furnishes four different tenants accommodations one week apiece is entitled to greater remuneration than a landlord who furnishes similar accommodations to a month-to-month tenant who under the law, at least, is required to give the requisite notice of termination of tenancy. In an even greater degree a landlord who furnishes tenants with daily accommodations is entitled to a greater proportionate return than merely that reasonable for a month-to-month tenancy. It was a great privilege to the tenants to be able to occupy these premises a number of days or a number of weeks as they wished, and it was a great privilege to them to be able to leave the premises as they chose at odd days or weeks before or after the termination of a month.

The defendant is required to make restitution in accordance with this ruling by payments to the Clerk of this Court, which are to be in turn paid by him to the tenants on application by them satisfactory to the Court, such payments by the Clerk to the tenants to be made, of course, upon Court order.

I think I have sufficiently covered the situation to make it clear to counsel. The Court fixes Monday, the 16th of January, 1950, as the time for presentation of findings, conclusions, and decree.

Mr. Knowlton: Does Your Honor make any provision for injunction?

The Court: The injunction prayed for will issue, which injunction will be subject to such modification as may be made in the rental schedule by the plaintiff, by the courts, or by other appropriate authorities, and the injunction will be subject to the further order of the Court.

Thank you, gentlemen.

February 10, 1950

ARGUMENT OF MOTION FOR NEW TRIAL

The Court: Counsel have tried this matter. To a large degree it was tried before the trial. There were many matters presented to me. I tried it. I viewed the premises. It was argued at length repeatedly, both orally and by briefs. Continuances were granted for the briefs. I entered a decision. I think the decision is proper. As a matter of fact, in some respects it is far more favorable to your client, Mr. Litchman, than any decision that you could have

cited to me as a precedent. In other words, I have the idea that my decision was the first one that gave to a tenant the benefit during a period when one schedule was in effect of a rent schedule that later took effect for a subsequent period. I don't think Mr. Knowlton has known of that having happened before in favor of a landlord. I think I was right. I gave careful consideration to this.

Now, there are some things that must be considered, and they must be considered in respect to the whole theory of rent control. Where an individual bought in good faith, without realizing at all the possibility of rent control, an apartment house in 1939 or 1940 and then from then up until now has been confronted with his rents being regulated by someone who perhaps did not know many of the things he ought to know to regulate the rents, there may be much merit in the complaints of such an individual against rent control. His income is regulated and bound and restricted while there is no control at all of his expenditures. His repairs and his taxes cost much more. Not only have his repairs cost much more, but they have not been nearly as good. Everything that he has bought with such portion of the income received, if any, over his expenses has cost much more. Such one can complain that food is certainly as necessary as rent, but there is no control over the people who establish prices for his food.

But this defendant was not such an individual. By your own statement, long after rent control was an established fact, he chose to buy this building.

He chose to contend with whatever hazards there were of rent control. He does not have the same right to feel burdened as that individual who bought before there was rent control and who has to pay more for everything he gets but receives less in rent than perhaps he should.

Now, you have made two substantial points. One is that because the building he bought was in bad repair before he repaired it that it is freed from control. If the Court were to establish the principle that whenever premises had gotten badly in repair and the landlord or owner did not repair them, then he could be freed from rent control by repairing his property, the Court would establish a most dangerous precedent. The Court would advise anyone who owned property that if they just disregarded the welfare of the tenants by allowing the roof to leak and the furnace to get out of repair so that the building would be condemned that then they could be freed from rent control and get a reward for having disregarded the welfare of the occupants of the building.

Just as soon as I follow your argument here in that respect I have to apply it to other people. I think if you were on the other side of the argument you could recognize the fallacy of such a holding.

Now, the second contention is that I am now, after the case has been tried and judgment has been entered, to go back and allow your client to put in evidence what he should have put in, if he had the right to put it in at all, long ago. Your excuse is that he did not know about it. Of course, the period

I am confronted with is the period of time from about August, 1948, to January, 1949. Whatever expenses he had by virtue of the earthquake of April, 1949, is immaterial as far as I am concerned. The fact that he lost and did not have part of his building in October, 1949, is again something I cannot take heed of. Were I to follow your suggestions in that respect, no case would ever be finished. The next time you win a judgment you will be anxious that the judgment that you win is final. I realize that everyone who loses a case is always willing that the case be tried over again because he may not be hurt any worse than before and he may win. Actually, you might be hurt worse. Perhaps I gave your defendant a more favorable decision than your defendant deserved. Actually, I think I gave the defendant just exactly what he deserved under the evidence and under the law. Further than that, I doubt very much that this Court in this kind of an action can be a forum to be the reviewing authority over the correctness of the rental schedules by the Housing Expediter. I am satisfied that if you will read the law itself you will have grave doubts of any such authority on my part. But even if I had the authority, that question should be presented to me timely. The landlord knew or should have known long before this trial that the rent schedule put in effect months before was insufficient. I gave as much time and consideration to this case as I could properly give in view of my obligations to other litigation. When the Court has only so much time and so many cases for consideration, it can give to

each only the amount that allows fair consideration of others.

I decided this case as well as I could. I hope I was right. What I have said now might indicate that I have no appreciation of the difficulties of your client. I sympathize with him, but I can't translate that sympathy into an abandonment of legal principles.

The motion for new trial is denied.

If the rent schedule effective in January, 1949, for the period succeeding the period involved in this action is too low, counsel should take appropriate steps in the appropriate forum at the proper time. But I have no authority in this case to say what the rent schedule shall now be because the only thing before me was what were proper rents in the period before the present rent schedule became effective.

Motion for new trial denied. Exception allowed.

Certificate

I, James R. Royse, do hereby certify that I am official court reporter for the above-entitled Court, and as such was in attendance upon the hearing of the foregoing matter.

I further certify that the above Transcript is a true and correct record of the matters as therein set forth.

/s/ JAMES R. ROYSE,
Official Court Reporter.

[Endorsed]: Filed May 10, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the above-entitled court, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 11 as Amended of the United States Court of Appeals for the Ninth Circuit, and Rule 75(o) of the Federal Rules of Civil Procedure, and designation of counsel, I am transmitting herewith all the original papers in the file dealing with the above-entitled action or proceeding, including the Court Reporter's transcript of the testimony and proceedings at the trial, together with Defendant's exhibit A, the same being the complete record on file in said cause. The papers herewith transmitted constitute the record on appeal from the judgment filed and entered January 20, 1950, to the United States Court of Appeals at San Francisco, California, and are identified as follows:

1. Complaint.
2. Praecipe for summons.
3. Summons with Marshal's Return thereon.
4. Answer of Defendant.
5. Amended Answer of Defendant.
6. Stipulation of Facts.
7. Plaintiff's Brief.
8. Defendant's Answering Brief.

9. Plaintiff's Reply Brief.

10. Defendant's Objections to Plaintiff's Proposed Findings of Fact and Conclusions of Law.

11. Defendant's Proposed Findings of Fact and Conclusions of Law.

12. Findings of Fact and Conclusions of Law.

13. Judgment.

14. Motion for New Trial.

15. Defendant's Notice of Appeal to Circuit Court of Appeals.

16. Defendant's Cost Bond on Appeal.

17. Court Reporter's Transcript of Proceedings at Trial.

18. Designation of Record on Appeal.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said district court at Seattle, this 12th day of May, 1950.

MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ TRUMAN EGGER,
Chief Deputy.

[Endorsed]: No. 12549. United States Court of Appeals for the Ninth Circuit. Mike J. Feeley, Appellant vs. Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed: May 17, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12549

MIKE J. FEELEY,

Appellant,

vs.

TIGHE E. WOODS, Housing Expediter, Office of the Housing Expediter,

Appellee.

APPELLANT'S STATEMENT OF POINTS

Appellant sets forth the following points on which he intends to rely on Appeal for reversal of the Judgment of the District Court and the Order denying New Trial:

1. The Plaintiff had no Statutory or Legal authority to sue on behalf of the tenants.

2. The accommodations of the Defendant were not subject to control by the Expediter:

a. because they were additional housing accommodations converted from a building about to be condemned; and

b. because of the services furnished which were those rendered by a family hotel.

3. Refusing to grant a New Trial because of newly discovered evidence which will show that the rates established by the Local Area Expediter were arbitrarily established and in violation of Section 204(b) (1) of the Housing and Rent Act of 1947 as Amended.

/s/ MARK M. LITCHMAN,
Attorney for Appellant.

Service admitted.

[Endorsed]: Filed June 2, 1950.

In the United States Court of Appeals
for the Ninth Circuit

No. 12549

MIKE J. FEELEY,

Appellant,

vs.

TIGHE E. WOODS, Housing Expediter, etc.,

Appellee.

APPELLANT'S DESIGNATION OF RECORD

The Appellant hereby designates the following documents to be printed in the Record on Appeal:

1. Complaint, excepting the Exhibit known as Exhibit "A" attached thereto.
2. Answer of Defendant.
3. Stipulation.
4. Findings of Fact and Conclusions of Law and Judgment.
5. Motion for New Trial and Affidavits in support of same.
6. Reporter's Transcript of Testimony.
7. Notice of Appeal.
8. Appeal Bond.
9. Designation of Points.
10. This Designation of Record.
11. Clerk's Certificate.

/s/ MARK M. LITCHMAN,
Attorney for Appellant.

Service admitted.

[Endorsed]: Filed June 2, 1950.